



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1992

Mr. Richard Rafes, J.D., Ph.D.
Vice President and General Counsel
University of North Texas
Texas College of Osteopathic Medicine
P. O. Box 13426
Denton, Texas 76203-3426

OR92-139

Dear Dr. Rafes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15065.

You have received a request for information relating to an evaluation made of the University of North Texas (the "university") psychology department's clinical psychology program by the American Psychological Association (the "APA"). Specifically, the requestor seeks information relating to a December 1991 visit by a three-member team of the APA to the university's psychology department, including, but not limited to, a draft report dated January 31, 1992. You have submitted to us a cover letter dated January 31, 1992 and a document entitled "Site Visit Report" for our review. You claim that the requested information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. The policy underlying the section 3(a)(11) exception is that public employees should be given significant latitude in conveying to fellow employees their subjective impressions regarding official business without the chilling effect on those views which the certainty of public disclosure would impose. Open Records Decision No. 308 (1982); *see also*

Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987).

As a threshold matter, we must determine whether information prepared by the APA falls within the section 3(a)(11) exception. Section 3(a)(11) applies to interagency and intra-agency communications. It applies to documents prepared by third-parties only in very limited circumstances. For example, in Open Records Decision No. 273 (1981), this office held that an advisory committee and its findings were within the section 3(a)(11) exception because the committee was a formal creation and acted as an official arm of the university. *See also* Open Records Decision No. 192 (1978). Section 3(a)(11) may also apply to documents prepared for an agency by outside consultants when the documents are specifically prepared for use in the agency's decision-making process; however, it does not apply to materials prepared by one outside the agency who has no official responsibility to do so, but acts only as an interested party. *See, e.g.,* Open Records Decision Nos. 563 (1990); 470, 466, 462 (1987); 437 (1986); 429 (1985).

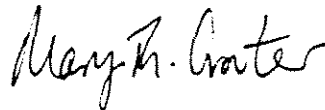
You advise us that the university authorized the APA to conduct its evaluation. You further advise us that

the accreditation process is an invaluable part of the evaluation process for the Department. Recommendations and comments of the site committee and the APA are and will be considered in certain employment and other departmental decisions.

You have not demonstrated, however, that the APA conducted its evaluation as an "official arm" of the university, or that the APA is a consultant to the university. Clearly the APA did not prepare the documents as an agent of the university. Although the draft evaluation report may be considered by the university in its decisional processes, it was not drafted explicitly for that purpose, but rather as part of the APA's accreditation review. Section 3(a)(11) does not apply to material prepared by a third-party for its own purposes. Accordingly, we conclude that the APA documents do not fall within the ambit of section 3(a)(11) of the Open Records Act. Therefore, the requested information may not be withheld from required public disclosure under section 3(a)(11) and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-139.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 15065
ID# 15320

cc: Mr. Henry Martinez
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